troller of Housing on 16 January 1981 was a standard form letter issued to all developers giving them one year within which to obtain the SSCT. The Controller of Housing would not have known the unusual circumstances of this case, involving three different types of land, ROD lots, LTA lots and state land. Admittedly, on each occasion when an application was made to the relevant authorities to extend time, reasons were given. While those reasons might be considered adequate for the authorities to grant extension, in our view they could hardly be described as matters outside the control of the appellants. The appellants knew the position precisely and should have provided adequate time for those things to be carried out and should also have taken a more active role in ensuring that the deadline was met. The appellants failed so to do.

In our judgment the learned judge is clearly right in the orders he made. Accordingly, we would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Lee & Lee*; *YH Cheong*.

Reported by *Terence Tan Bian Chye*

Public Prosecutor v Mustari bin Suri

HIGH COURT (SINGAPORE) – MAGISTRATE'S APPEAL NO 190 OF 1987
CHUA J
28 FEBRUARY 1989

Criminal Law – Housebreaking and theft by night – Respondent jointly tried with two other co-accused – Evidential value of respondent's confession and co-accused's statement implicating respondent considered weak by trial judge – No reasons given – Whether corroborative evidence of respondent's confession needed – Respondent's defence of alibi not dealt with specifically by trial judge – Respondent and one co-accused acquitted whilst other co-accused convicted – Whether trial judge erred in law and in fact

The respondent was jointly tried with two co-accused, R and H, for offences committed under s 457 read with s 34 of the Penal Code (Cap 224, 1985 Ed), viz housebreaking and theft by night between 14 and 15 November 1984. At the conclusion of the joint trial, the District Court acquitted and discharged the respondent and R and convicted H on all counts. The Public Prosecutor appealed to the High Court against the order of acquittal of the respondent.

At the trial, the prosecution tendered three cautioned statements made by the respondent wherein the respondent admitted to the offence. However, in his defence, the respondent testified that on 14 November 1984, he drove his lorry to R's house in the evening with his uncle and his wife. When they did not meet R, he drove to his new flat and subsequently to his mother's house. As for H, he gave a statement implicating the respondent as the initiator of the break-in plans and as the driver of the lorry used by all the accused in going to and away from the place of crime. In his grounds of decision, the trial judge held that the evidential value of the respondent's confessions and H's statement was very weak and as such, acquitted the respondent. At the appeal, the Public Prosecutor submitted that the trial judge erred in law and in fact (a) in not acting on the confessions of the respondent; and (b) in not taking into account the confession of H against the respondent when it implicated the respondent in the commission of the offences.

Held, allowing the Public Prosecutor's appeal:

(1) The trial judge did not find that the respondent's confession was untrue. He appeared to be under the impression, quite wrongly, that a clear confession was not sufficient and that there must be some corroborative evidence and that was why he dealt with the evidentiary value of the statement of the co-accused H which implicated the respondent.

(2) The trial judge did not give any reasons why he considered the evidentiary value of H's statement implicating the respondent as very weak. There is no reason why he should have come to such a conclusion.

(3) The respondent's alibi was based entirely on his own evidence. It was not corroborated. He did not call his wife or uncle. There was no evidence why they could not have been called. The alibi was not true as it was contradicted by R. The respondent's alibi should have been rejected by the trial judge.

(4) With the clear confession of the respondent and the statement of H implicating the respondent, there was ample evidence before the trial judge to establish beyond a reasonable doubt that the respondent had committed the offences and he should have found the respondent guilty and convicted him.

Cases referred to

1 *Osman & Anor* v *PP* [1967] 1 MLJ 137 (folld)
2 *Yap Sow Keong* v *PP* [1947] MLJ 90 (folld)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) ss 120, 121(5)
Penal Code (Cap 224, 1985 Ed) ss 34, 457

Lee Seng Lit for the Public Prosecutor.
TU Naidu for the respondent.

Cur Adv Vult

Chua J: The Public Prosecutor appeals against the order of acquittal of the respondent, Mustari bin Suri, by the District Court.

The respondent was jointly tried with two co-accused Rafrin bin Osman and Hasan bin Akbar on four counts under s 457 read with s 34 of the Penal Code (Cap 224, 1985 Ed) of housebreaking and theft by night between 14 November 1984 and 15 November 1984, by entering successively into four adjoining warehouses at Godown 404, Pasir Panjang Warehousing Complex. All the four offences were allegedly committed the same night with the common intention of two other accomplices, Suri bin Kachong and Samudin bin Salleh, who

had both pleaded guilty and were convicted and sentenced by other courts earlier.

At the conclusion of the joint trial the respondent and co-accused Rafrin were acquitted and discharged on all the four charges, while the co-accused Hassan was convicted on all counts.

The Public Prosecutor is appealing against the order of acquittal of the respondent in respect of three of the charges: DAC No 5733, 5734 and 5735 of 1987.

It was not in dispute that the four adjoining warehouses were broken into on the night of 14 November 1984 and that properties were stolen from them.

Suri bin Kachong and Samudin bin Salleh gave evidence for the prosecution incriminating the respondent and the other two accused. Their evidence was strenuously challenged by the defence. The trial judge found that these two witnesses were unworthy of credit and that their evidence was wholly unreliable.

The respondent was arrested on 21 November 1984 at 9 pm. The first statement from the respondent was recorded on 22 November 1984 at 4.35 pm by Inspector Harbans Singh. In this statement (exh P57) he denied that he was involved in the offence of housebreaking at Godown 404 on 14 November 1984. He stated that between 7.30 pm and 10 pm he was with his wife painting their new flat at Jurong West Avenue 1 until 10 pm and that he was assisted by Rausi bin Ahmad and returned home to Pandan Gardens at 10.35 pm and went to sleep until the next morning when he left for work at 6 am as usual. The defence did not object to the admissibility of P57 and it was admitted under s 121(5) of the Criminal Procedure Code (Cap 68, 1985 Ed).

After the respondent had given his statement P57, he was interrogated by a team of seven detectives from 5.35 pm to 7 pm the same day, 22 November 1984. At 7 pm on 22 November 1984 the respondent was brought again before Inspector Harbans Singh as the respondent had by then purportedly admitted to the commission of the offences. However, Inspector Harbans Singh did not immediately record a cautioned statement but he instead brought the respondent to the scene of the crime and it was only at 10.40 pm did he commence the recording of the second statement under s 120 of the Criminal Procedure Code. After a voir dire on this statement, the trial judge did not admit it on the ground that it was apparently already pre-recorded by Inspector Harbans Singh before the interpreter was called in to interpret it to the respondent.

The prosecution next tendered four cautioned statements by the respondent. One was made on 23 November 1984 in respect of DAC 5670 and three statements made on 27 November 1984 in respect of DAC 5733, 5734 and 5735 respectively.

The first cautioned statement made at 8.30 am on 23 November 1984 was not admitted after a voir dire, again, because the interpreter merely interpreted to the respondent the statement which had been prepared and completed by the investigating officer.

A separate voir dire was conducted in respect of the other three cautioned statements of the respondent relating to DAC 5733, 5734 and 5735. The trial judge decided these statements were admissible as evidence as he was satisfied that they were voluntarily given by the respondent. In each of these three cautioned statements (exhs P58, P59 and P60), the respondent merely stated:

> I admit to the offence and ask for leniency as I have co-operated with the police.

The trial judge, after another voir dire, also admitted the statement made by the co-accused Hasan bin Akbar under s 120 of the Criminal Procedure Code (exh P66). In his statement Hasan implicated the respondent as the initiator of the break-in plans and as the driver of the lorry used by all the accused in going to and away from Godown 404. The respondent, however, was not implicated in the actual break-ins and thefts.

The prosecution also called Rausi bin Ahmad (PW 27) who said that he was at home the whole night on 14 November 1984. He said he did help the respondent to paint the respondent's new flat but the work was completed on 13 November 1984.

At the end of the prosecution case, counsel for the respondent submitted that the only evidence against the respondent was his three cautioned statements wherein he admitted to the offence, but that no weight should be attached to these confessions since they were at variance with the respondent's first statement P57. The trial judge called upon the respondent to enter upon his defence. In his grounds of decision the trial judge said that he took into consideration Hasan's statement P66 implicating the respondent in deciding that a prima facie case had been proved against the respondent.

In his defence the respondent testified that on 14 November 1984 he finished work at 5.30 pm. He then drove his lorry to Rausi bin Ahmad's house at 6.30 pm with his uncle and his wife. When he did not meet Rausi he drove to his new flat as he had an appointment to buy a water-heater from a salesman at 7 pm. From his new flat he drove to his mother's house at Pasir Panjang. At 11 pm he, his wife and children left his mother's house and returned to his mother-in-law's flat and went to sleep till the next morning. As regards his statement P47 he said that he made a mistake when he mentioned that Rausi was with him on 14 November 1984 as he was then in fear. Rausi, however, did assist him on 13 November 1984 but could not recall whether Rausi assisted him on 14 November 1984. The respondent denied committing the offences.

The respondent did not call any other witness in his defence. Rafrin, the co-accused, elected not to give evidence in his defence and he did not call any witness.

Hasan, the other co-accused, was the only witness in his own defence. He said that since he never kept a diary and had no witnesses he could not give clear evidence to defend himself; but he denied committing all the four offences. He refused to say anything else despite advice from the court. He was not cross-examined.

The trial judge in his grounds of decision said:

> After hearing the submission of the defence counsel and the prosecuting officer I took stock of the evidence before me and all the surrounding circumstances of the case in deciding on the weight to be given to Mustari's three cautioned statements (P58, P59 and P60) and Hasan's statement under s 121(5) (P66).
>
> I had no hesitation in convicting Hasan on all the four charges. He had not only admitted to the offences in his cautioned statements but he had also given a detailed confession particularizing his role in the break-in and theft in his statement admitted under s 121(5) of the Criminal Procedure Code. Furthermore, after electing to give evidence, he merely stated that he denied committing all the four offences (p 270 of the notes of evidence).
>
> In respect of Mustari, there was no evidence left against him in respect of the first charge (P1A) after his cautioned statement 'B' was not admitted. He was therefore acquitted and discharged.
>
> As for the remaining three charges in DAC 5733, 5734 and 5735 of 1984, Mustari's cautioned statements, whereby he merely admitted to the offences and pleaded for leniency, were evidence. However, I considered that these bare confessions were given on 27 November 1984, consecutively at 8.50 pm, 9.15 pm and 9.35 pm, after he was first arrested on 21 November 1984 at 9 pm. They were given while the accused was in remand for the past six days. I also took into consideration the detailed statement given by the accused less than 24 hours after his arrest (P57 recorded on 22 November 1984 at 4.35 pm) whereby he completely denied being involved in the offences. As there were clear contradictions in the statements given by the accused, less credence could be given to these statements. What was more, the accused in his testimony further denied committing the offences and generally maintained the stand he took in his statement P57. I did not hold the statement in P57 (that PW 27 was with him painting his flat on 14 November 1984) against the accused since he had probably mistaken the date for 11 November 1984 to 13 November 1984. This further reduced the evidentiary weight of the three cautioned statements.
>
> In respect of the co-accused's statement P66, I had constantly borne in mind that in a joint-trial, the *evidence* on each charge against each accused must be considered separately and distinctly from the *evidence* against the others. Section 30 of the Evidence Act did not turn Hasan's confession in P66 into substantive evidence against the accused Mustari. Although I had taken it into consideration, its 'evidentiary' value as against Mustari is very weak. Considering the reduced weight of Mustari's cautioned statements and the weak 'evidentiary' value of Hasan's confession together with the absence of any other independent evidence which implicated Mustari, I decided that it would not be safe to convict him on the three remaining charges. I therefore ordered that the accused Mustari be acquitted and discharged on all the charges against him as the prosecution had not proved, beyond any reasonable doubt, his guilt.

The submission of the appellant is that the trial judge erred in law and in fact (a) in not acting on the confessions of the respondent after they were admitted at the conclusion of three voirs dire; (b) in not taking into account the confession of the co-accused Hasan bin Akbar against the respondent when it implicated the respondent in the commission of the offences.

The trial judge held that the evidential value of the respondent's confessions was weak for the following reasons:

(a) the three cautioned statements were bare confessions admitting to the offences and pleading for leniency made while the respondent was in remand for six days, whereas the respondent's detailed statement P57 was made less than 24 hours after his arrest in which he completely denied being involved in the offences;

(b) the respondent in his defence had denied committing the offences and generally took the stand he took in his statement P57;

(c) he did not hold the statement of the respondent in P57, that Rausi was with him painting his new flat on 14 November 1984, against the respondent as the respondent had probably mistaken the date.

The trial judge then sought corroborative evidence to support the confessions. He held that Hasan's confession P66 implicating the respondent was not substantive evidence against the respondent. Although he took it into consideration he held that its 'evidentiary' value as against the respondent was very weak.

> The trial judge then concluded: Considering the reduced weight of Mustari's cautioned statements and the weak 'evidentiary' value of Hasan's confession together with the absence of any other independent evidence which implicated Mustari, I decided that it would not be safe to convict him on the three remaining charges.

In *Osman & Anor* v *PP*,[1] the Court of Criminal Appeal in Singapore adopted the view of the law applicable to retracted confessions clearly stated by the Malayan Union Court of Appeal in the case of *Yap Sow Keong* v *PP*[2] in these words, at p 91:

> In our view the law as to the admissibility of retracted confessions made in evidence is clear, and put shortly it is that an accused person can be convicted on his own confession, even when it is retracted, if the court is satisfied of its truth. We do not agree with those Indian decisions which lay down that before a person can be convicted on his retracted confession there must be corroborative evidence to support it.

The trial judge in this case did not find that the confession was untrue. He appeared to be under the impression, quite wrongly, that a clear confession was not sufficient and that there must be some corroborative evidence and that was why he dealt with the evidentiary value of the statement P66 of the co-accused Hasan which implicated the respondent.

The trial judge did not give any reasons why he considered the evidentiary value of Hasan's statement in P66 implicating the respondent very weak. I can see no reason why he should have come to such a conclusion.

The respondent's alibi was based entirely on his own evidence. It was not corroborated. He did not call his wife or uncle. There was no evidence why they could not have been called. The respondent's statement P57 was not true as it was contradicted by Rausi. The trial judge in fact did not deal specifically on the respondent's evidence of alibi. The respondent's alibi should have been rejected by the trial judge.

With the clear confession of the respondent and the statement of Hasan in P66 implicating the respondent, there was ample evidence before the trial judge to establish beyond a reasonable doubt that the respondent had committed the offences and he should have found the respondent guilty and convicted him.

The appeal is allowed. I reverse the order of acquittal of the trial judge and find the respondent guilty of the charges in DAC Nos 5733, 5734 and 5735.

I will hear counsel on sentence.

Order accordingly.

Solicitors: *TU Naidu & Co.*

Reported by *Ng Sheau Jiuan*

Fu Loong Lithographer Pte Ltd v Mun Hean Realty Pte Ltd

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 219 OF 1986
GRIMBERG JC
27 FEBRUARY 1989

Land Law – Sale of property – Completion date in contract of sale – Completion date subsequently added to comply with legislation – Whether seller liable for late completion – Whether buyer estopped from holding seller to completion date – Whether buyer had waived right to insist on completion date – Legislation regarding allowing only contracts in a certain form – Whether pleas of estoppel and waiver violated legislation – Sale of Commercial Properties Act (Cap 281, 1985 Ed), s 5 – Sale of Commercial Properties Rules 1985, rr 5, 6, 7 & 14

Evidence – Plea of estoppel – Whether plea contrary to public policy

The buyer (the plaintiffs) concluded an agreement ('agreement I') with the seller (the defendants) for the purchase of a part of a factory ('the property'). The agreement contained clauses in which the area of the property was given approximately and provision was made for an adjustment of the purchase price for the difference between the estimated and the actual area. The seller was to deliver vacant possession of the property within 14 days of the issue of the temporary occupation licence ('TOL'), but if the TOL was not issued by 28 February 1981, then the seller was to pay the buyer interest on the moneys the buyer had paid to the seller. Completion was to take place 14 days after receipt by the buyer of notice to complete from the seller, but no provision was made for liquidated damages.

JN, an advocate and solicitor, acted for both the buyer and the seller in the transaction. The buyer wanted to obtain a mortgage from DBSF to finance the purchase and the latter's solicitors drew JN's attention to the fact that agreement I did not comply with the requirements of the Sale of Commercial Properties Act ('the Act') in that, inter alia, no completion date was stipulated. JN drew up a second agreement ('the agreement II') which was executed by the buyer and the seller and backdated to the date of agreement I.

Agreement II differed from agreement I in that the former provided for notice to complete to be given by the seller on or before 31 December 1983, and for liquidated damages for delay. Also, there was no longer any duty on the seller to procure a TOL by a specified date. The clause referring to the fact that the specified area of the property was only approximate was totally omitted.

TYH later acquired the whole of the issued share capital of the buyer. After that, the seller gave the buyer notice to complete after the date specified in agreement II and asked the buyer to pay the balance of the purchase price which had not been paid and an amount to compensate for the actual area of the property being more than the specified area. The buyer refused to pay the two sums and claimed to be entitled to liquidated damages for the seller's failure to issue the notice of completion on time.

The buyer started an action claiming liquidated damages, an order that the purchase price of the property be abated by that amount, interest on the liquidated damages and an order that the sale and purchase of the property be completed on the basis that the seller do make payment to the buyer of the